

# Teaching Property Stories

Laura S. Underkuffler

I have always believed that we property teachers have an easy job. First-year students generally come into our classes with low—indeed, nearly subterranean—expectations. While constitutional law promises politics and riveting social history, contracts law promises principles for everyday life, and torts law (if students know what it is) promises the drama of courtrooms, property law's promise is more obscure: "estates in land, including the fee simple, the fee tail with its statutory substitutes, the life estate, the estate for years . . . ; types of future interests; conveyances . . . ; landlord and tenant; . . . easements . . ." (to quote the description of the first-year Property course on the Duke Law School Web site). With such a buildup, we cannot help but be stars if we do anything interesting or engaging.

The truth, of course, is that Property, "in the teaching," is a fascinating first-year course. Students will realize that no other first-year course deals with subject matter more essential to human lives. We might never personally engage a constitutional question; we might never try to enforce a contract; we might never be involved in a personal action or replevin. But every one of us will possess property that we wish to shield from the claims of others. Whether it is land, bank accounts, chattels, body parts, personal information, ideas, or other objects or interests, we *will* personally and vitally care about the law of property. The property teacher luxuriates in the unfolding of this important and inescapable idea.

Like teachers in other fields, we tell stories to expose the foundations of property law. This is, of course, one of the brilliant aspects of the case method. Legal rules are not simply stated; they are presented in a web of human relationships, hopes, angers, and follies. Just as we are drawn to accounts of the secret, private lives of politicians and socialites, we yearn to know more about the characters we encounter in Property. Why *did* the neighbors hate Joseph Van Valkenburgh? Why did the Shelleys buy that house? Why didn't Lucas simply seek a special permit, as others did, to build on his lots?

*Property Stories* draws us to its tales through our curiosity about such questions.<sup>1</sup> Once within the book's grasp, we learn much more. Fascinating characters, political movements, judicial structures, and legal rules come to life.

**Laura S. Underkuffler** is a professor of law at Duke University. In spring 2005 she is visiting at Harvard Law School.

1. *Property Stories*, eds. Gerald Korngold & Andrew P. Morriss (New York, 2004). Page references appear in parentheses in the text.

Take the first story, that of *Sturges v. Bridgman*,<sup>2</sup> told by A. W. Brian Simpson. Here we have Dr. Octavius Sturges, a London physician, in a land-use dispute with Mr. Frederick Horatio Bridgman, “confectioner to Her Majesty the Queen and to His Royal Highness, the Prince of Wales” (pages 9, 21). We learn that Dr. Sturges was “a medical man of considerable distinction” (12). A fellow of the Royal College of Physicians, he lectured in the Westminster Medical School and published extensively, “his specialisms being pneumonia and chorea” (12). Mr. Bridgman, on the other hand, succeeded his late father in the business of a cook and confectioner.

Simpson gives us a vivid picture of the physical setting of the dispute, at the intersection of Wigmore and Wimpole Streets. Mid-nineteenth-century Wigmore Street, where Mr. Bridgman’s business was located, “was predominantly commercial. The principal trade was clothing—there were dressmakers, milliners, lace cleaners and the like. Other businesses included a bell hanger, wax chandlers and buttermen and, for the medical men of Wimpole Street, a dealer in medical rubber” (12). Wimpole Street, where Dr. Sturges lived, was more elegant, with many doctors conducting their professions from their homes. “The medical profession had been colonizing Wimpole Street for some time. In 1871 there had been only nineteen physicians there, but in 1878 thirty-eight of the ninety-five properties listed in *Kelly’s Post Office Directory* were occupied by physicians or surgeons . . .” (12–13). “By 1888 another ancillary trade, that of undertaker, had moved into 3B Wimpole Street; until then medical failures, or rather their relatives, had to seek this service elsewhere” (13).

***Property Stories*, edited by Gerald Korngold & Andrew P. Morriss.  
New York: Foundation Press, 2004.**

No zoning existed in nineteenth-century London, although the gravitation of the rich and the poor toward areas they could afford produced much the same effect. At the intersection of Wigmore and Wimpole Streets, both competing uses—doctors’ offices and confectionery manufacturing—were appropriate and generally acceptable. But the “noise and vibration emanating from [Mr. Bridgman’s business on] Wigmore Street affected and interfered with [Dr. Sturges’s] professional and residential use in Wimpole Street” (13).

Simpson describes the party wall that Sturges and Bridgman shared, the details of the doctor’s and the confectioner’s professional activities, and the “thumping character” of the offending noise. The noise was apparently caused by “two sixteen inch marble mortars, located near the northeast corner of [Bridgman’s] kitchen, close to the south west corner of [Sturges’s] consulting room” (14). These mortars “were used for crushing loaf sugar, almonds and . . . meat,” and “were set in brickwork built up against the party wall” (14). Experts were called in to assess the noise and vibration, with one employing an “egg and tumbler” (14–15) test.<sup>3</sup>

2. 11 Ch. D. 852 (1879).

3. “Presumably you balance an egg on an inverted tumbler and wait[] for it to fall off, but this is speculative” (15 n.18).

Interwoven with this story are discussions of the Coase Theorem, the efficacy of private bargaining in nuisance claims, and the general role of economic analysis in private and judicial resolution of claims of this type. Simpson argues that where (as here) the asserted, conflicting claims are completely incompatible and strongly held, the idea that the parties will (in the absence of government intervention) bargain toward some efficient solution is almost fanciful. Neither Sturges nor Bridgman wished to move his business. And

[a]lthough we do not know the details it would be quite astonishing if Dr. Sturges considered for one moment the possibility of paying Mr. Bridgman money to change his ways, much less that Mr. Bridgman would have considered offering Dr. Sturges money to change his, for example by reducing the number of patients he saw, or seeing them in his dining room, or wherever (31).

A solution could not be found until a court declared which claimed entitlement was superior to the other.

Throughout this discussion Simpson points out that law involves practical reason and must often consider factors other than those that produce economically efficient outcomes (or any other result generated by theory). Indeed, Simpson argues, the very idea of private property itself is often a challenge to such theories. Although “[i]t may well be that the institution of private property . . . has, in general, a tendency to encourage and facilitate the creation of wealth” (38–39), it does not follow that property rights should be allocated on this basis. We may not know or be able to discover who is in fact the greatest wealth producer. And, after all, “the law allows gifts to be made to the feckless and improvident,” and “[n]incompoops may inherit” wealth (39). “Despotic dominion is what the right to private property is all about, and it includes the right to behave in ways which make no contribution whatever to the national wealth” (35).

Seeking perhaps to avoid such theoretical quagmires, the Court of Appeal focused on what appears to be a simpler issue: whether Bridgman had acquired the right to make the noise. The judges held that he had not. In their view, there is no right of action for acts which do not, in the current condition of the adjoining land, cause any annoyance or inconvenience to its owner or occupier. But if they should become such a disturbance to a neighbor, a right of action lies, lest “the use and value of adjoining land [be] for all times and under all circumstances . . . restricted or diminished by reason of the continuance of [the] acts . . . .”<sup>4</sup> Indeed, the noise maker “might protect himself by taking a sufficient curtilage to ensure what he does from being at any time an annoyance to his neighbour . . . .” (6).

The court’s instinct seems to have been correct; for, as Simpson tells us, Bridgman’s “business did not move as a result of the litigation, and in due course his son, whose name was James, joined him, appearing for example in *Kelly’s Directory* for 1888 and 1889” (39). But the winds of change could not be

4. *Sturges v. Bridgman*, 11 Ch. D. at 865.

defied forever. The business gradually declined, and within a decade it had disappeared. "At about the turn of the century 28–34 Wigmore Street was redeveloped and became Norfolk Mansions, the building which today stands upon the site" (39).

And Dr. Sturges? He practiced medicine from 85 Wimpole Street until his death. After winning his case, "he became rather deaf, and he did not hear the approach of a rubber tired hansom cab, which knocked him down in Cavendish Square on 16 October 1894. He died of internal injuries at his home . . ." (39). His house remains as it was then, now occupied by a firm of surveyors (39).

The brilliant interweaving of story, theory, and law that characterizes Simpson's tale can be found throughout *Property Stories*. In the next story, about the famous *Moore* case,<sup>5</sup> Maxwell J. Mehlman describes the breaking events in organ transplantation and other biomedical fields that provided the backdrop for this decision by the California Supreme Court (41, 43–52). These advances transformed what had previously been simply "surgical waste" or "bodies for burial" into highly valued and critically scarce "biological materials" for saving human lives. Clashes for control occurred then, and occur now, between those who are the materials' "source" or those who wish to control the body of the "source" (such as family and friends); those who assert that the body is sacred; and those who hope to use these materials for research, healing, and profit. Are these materials "property"? Mehlman asks. *For whom* might they be property? *Whose values*, in this cacophony, should guide our decisions?

In the third story R. H. Helmholz offers us a poignant (and probing) account of a classic tale involving adverse possession. Yes, it is the *Van Valkenburgh* case.<sup>6</sup> How can a story about such disagreeable characters be poignant? Well, wait and see.

Helmholz's story begins by transporting us to another time, simply by describing the piece of land the case involved. Within the City of Yonkers and just north of New York City, the land

was . . . exceedingly hilly and rocky. In the words of a description of the time, it was "a piece of rugged wilderness" and indeed "one of the wildest spots in the city." Only in some parts could it have been used for any kind of agriculture, still less for activities appropriate to the tastes of a leisured class (57, 59).

The triangular parcel over which the parties fought was covered with trees and rock outcroppings. Access was difficult. In 1912 William and Mary Lutz bought two parcels adjacent to it and traveled between the two across the northern end of the triangle. Those who lived in the vicinity called this route "the traveled way" (60).

The feud with the Van Valkenburghs began in 1946, when the Lutz family had been using the triangular parcel for twenty-five years. As Helmholz tells

5. *Moore v. Regents of the University of California*, 793 P.2d 479 (Cal. 1990), *cert. denied*, 499 U.S. 936 (1991).

6. *Van Valkenburgh v. Lutz*, 106 N.E.2d 28 (N.Y. 1952).

us, the contending families belonged to different social classes. "William [Lutz] eked out a living in unpromising circumstances. He supported his family as best he might, and his son Eugene owned and operated a filling station in the community" (61). The Van Valkenburghs were a prominent family, owning a publishing business in New York City and various real estate holdings in the city and elsewhere. Today "[t]he family maintains an extensive web-site, complete with an elegant family coat-of-arms. The site traces the ancestry and accomplishments of the descendants of Lambert of Valkenburgh, who came to the New World with his wife, Annetie Jacobs, in 1644 . . ." (62).

Joseph D. and Marion Van Valkenburgh purchased land and built a house in the neighborhood in 1937. They could see the Lutz house and the triangular parcel from their window (63). Adding another quirk in the adverse possession story, the Van Valkenburghs did not actually live in the house they had constructed. It was an investment, and they lived elsewhere, probably in New York City (63).

Thus the stage was set for the conflict. The triangular parcel, with the Lutzes' garage, shed, shack, chicken coop, and other structures, was undoubtedly an eyesore for the Van Valkenburghs. When they visited their house in Yonkers, they allowed their children to play on the triangular parcel, where they were (famously) chased by William Lutz wielding an iron pipe. This led to the arrest and ultimate conviction of Lutz, "at the instigation of Van Valkenburgh," and a later retaliatory action (probably brought by Lutz) seeking to subject Van Valkenburgh to criminal trespass charges (63). When the opportunity to buy the triangular parcel at a tax foreclosure sale was presented to the Van Valkenburghs in 1947, one can imagine that they jumped for it.

Once the Van Valkenburghs asserted their claim to the triangular parcel, the case that has come to represent "adverse possession" to thousands of law students began. We are told the story in gratifying detail. We hear of Joseph Van Valkenburgh's aggressive tactics (such as the erection of two fences across the "traveled way") and William Lutz's legal missteps. We hear how the Van Valkenburghs eventually won the case, although William Lutz did not live to see the end. He died in 1948, four years before the famous decision was rendered. Final word came to Mary Lutz, "widow, executrix, and sole legatee of William," and their son, Eugene, who had continued the litigation in his father's place (65). After six years of litigation the Lutzes had an easement over the "traveled way" and no more (64-65).

With this decision in 1952, the dispute should have been over. But it was not.

Eugene Lutz quickly made a motion for re-argument, which was denied. Still unwilling to let the matter drop, by 1960 he had begun again, bringing suit in the name and as guardian *ad litem* for his uncle, Charles Lutz, who had occupied some of the same property. The new action described the Van Valkenburghs as "squatters or intruders, [not] entitled to possession" (66).

Eugene Lutz lost again in 1968. When he was contacted in 1993 about the years of litigation—almost thirty years later—he was still a bitter and “hostile man” (61).

Helmholz explores the ambivalent emotions that a case like this evokes in us and, indeed, our ambivalence about the core idea of adverse possession. Perhaps, however, the deepest lesson of Helmholz’s tale is about the toxic mixture of human bitterness and litigation. Litigation consumed more than twenty years of the parties’ lives, extracting a price from both the vanquished and the victor. There is also the inexorable truth that whatever human emotional blood is spilled, in the end all fades away. Today the parties are dead, and “[t]he land in dispute is . . . occupied by a parking lot (capacity 75 cars) for worshipers at the Greek Orthodox Church of the Prophet Elias” (60).

Another story with fascinating characters and lasting bitterness is that of *Gruen v. Gruen*,<sup>7</sup> told by Susan French. This is a story about a disputed gift of a Gustav Klimt painting (*Schloss Kammer am Attersee II*) from Victor Gruen to his son. Victor Gruen (born Viktor Grünbaum) was a refugee from Austria who fled to the United States as the Nazis sought to arrest him. He was a colorful and creative man, a well-known architect, who apparently had a way with women. The story of his gift to his son, contested by his fourth wife (and widow), is about the perils of undelivered gifts, ambiguous intentions, and desires to avoid inheritance taxes. It is also a story about the perils of dishonesty in the practice of law; the son, a lawyer himself, filed (in his own divorce case) “misleading affidavits” (71, 91). Perhaps most practically, we are reminded of a problem rarely mentioned in law school—the little matter of collections. By the time the courts upheld the son’s claim to the painting, his stepmother had left the United States. When asked about the location of the painting, she chose not to be forthcoming. Despite her loss in the courts, the power remained in her hands. It was not until quite a while later that the son received a note from her directing him to retrieve the painting from a bank vault in Switzerland (94).

Pat Cain explores a subject often neglected in first-year Property classes: tenancies by the entirety. In *Sawada v. Endo*,<sup>8</sup> we have the wrenching conflict between the Endos—82-year-old Kokichi and his wife Ume, age 75, who had very few assets and no liability insurance but owned their own home as tenants by the entireties—and Masako and Helen Sawada, sisters who were struck by Kokichi Endo’s car and suffered serious and permanent injuries (97–98). One month after the Sawadas filed their tort claim, the Endos deeded their home as a gift to their two sons, in an apparent effort to shield it from any judgment. Ten days after judgment was entered for both sisters, Ume Endo died.

The conveyance by Kokichi Endo could have been set aside as a fraudulent attempt to avoid creditors’ claims. But could Ume Endo, who was not involved in the Sawada sisters’ suit, convey the entireties property? Cain illuminates the ideological and practical conflicts between the idea of the tenancy by the

7. 496 N.E.2d 869 (N.Y.1986).

8. 561 P.2d 1291 (Haw. 1977).

entirety and the Married Women's Property Acts, and the often generally conflicting interests of innocent spouses and creditors.

*Sawada* upheld the right of the innocent spouse to transfer the property (in its entirety). Was this fair? As Cain writes,

Mr. Endo was a tortfeasor, a wrongdoer. He owed [the Sawada sisters] compensation and he owned a property interest in entireties property from which he could have paid their claim. He was the spouse who survived. Using the property to pay the claim after [Ume Endo's] death would not have taken away her . . . survivorship rights (115).

Although the rights of owners of entireties property are fiercely defended by some as essential to the unity and integrity of the marital unit, and although Kokichi Endo is perhaps as sympathetic a defendant as one can imagine, one still wonders about the strategic uses of entireties ownership that the court's holding condones.

In the next two stories, we move from interpersonal questions to issues of broad social and political import. *Javins v. First National Realty Corporation*<sup>9</sup> was the first case to hold—unequivocally—that a warranty of habitability is implied in all residential leases. It is often difficult to bring landlord-tenant law to life; the cases seem to collapse into desiccated rules with little human or political context. That Richard H. Chused's story of the *Javins* case is completely different is apparent in its opening (121).

[T]en months after the Watts area of Los Angeles went up in flames in an outburst of black anger, ten days after civil rights worker James Meredith was shot by a sniper in a failed assassination attempt while on a "March Against Fear" from Memphis to Jackson, five days after the start of the first of two civil disturbances that summer in Chicago, and the same day Stokely Carmichael, chairman of the Student Non-Violent Coordinating Committee, made his famous "Black Power" speech in Greenwood, Mississippi,

the first efforts of the largely poor and black residents of the Clifton Terrace project in Washington, D.C., to protest their terrible housing conditions were thwarted by the District's Landlord and Tenant Court (123). More than four years later, after threats to their legal counsel, additional evictions, the temporary jailings of the building's onetime owner, political interventions and failures, and multiple transfers of the building's ownership, the tenants (or those who were left) won the right to withhold rent and force improvement in their deplorable housing conditions.

The riveting story is a stark testament to the importance of political and social context in the law's development. Drawing on interviews with attorneys, law clerks, and others involved in the case, as well as voluminous documentary evidence, Chused presents vivid and complex portraits of the landlords, tenants, housing activists, politicians, and others who played crucial roles in the drama. Judge J. Skelly Wright, who wrote the *Javins* opinion, had previously earned the enmity of Louisiana's politicians for ordering the desegregation of public schools in New Orleans while sitting as a federal district court

9. 428 F.2d 1071 (D.C. Cir. 1970).

judge. “Indeed, President Kennedy is said to have promoted him to the federal circuit court in Washington rather than to a southern panel in order to satisfy the desires of Louisiana’s senators to get him out of town” (162). In his later years Wright candidly admitted that his experience in the civil rights movement affected his view of tenants’ struggles and his decision in the *Javins* case (163). In an interview by CBS News after the case was decided, he noted that without a lawyer a poor person is helpless, making the “law . . . systematically ‘biased against the poor’” (162). “Any lay person, he contended, would find ‘completely reasonable’ the idea that a lease for an apartment has a warranty requiring that the place be ‘livable.’ If the landlord doesn’t fulfill ‘all of his bargain, then why should the tenant have to fulfill all of his?’” (162)

The story of *Shelley v. Kraemer*,<sup>10</sup> told by Carol Rose, is an account of similarly epochal social and legal change. *Shelley* actually involved two cases decided by the U.S. Supreme Court in 1948 (169). Both involved racially restrictive covenants limiting buyers or occupants to those “of the Caucasian race” (169). The house the Shelleys bought was subject to a restriction in the form of a neighborhood agreement adopted in 1911. “The original agreement had been signed by only thirty owners out of thirty-nine in the designated area, covering forty-seven parcels out of fifty-seven” (191). African-Americans had lived continually in the neighborhood in the intervening years; indeed, five of the nonsigning owners were African-American (191–92). The mixed character of the neighborhood gave the Shelleys no notice of the restriction. “As Mrs. Shelley said at trial, ‘I see other people on the street, that’s why I bought it.’ While the agreement was recorded, it was not in the Shelley’s [sic] deed and apparently not in any other major document of transfer . . .” (192). In the companion case, the racially restrictive covenant was recorded in 1935, and the buyers’ (the McGhees’) deed referred to “restrictions of record.” “The question of actual notice was not at issue in the case, suggesting that the McGhees did know that the area was restricted” (194).

As Rose explains, at common law the buyers’ knowledge or ignorance of the restrictions mattered to their enforceability. The exploration of this and other issues at trial illuminated the human insults and indignities imposed by such covenants and by prevailing attitudes toward race. Rose describes how, in their fight against the McGhees’ covenant, NAACP lawyers

flummoxed a white neighbor by asking how he knew that the couple moving in next door were “Negroes” (the answer: “I have seen Mr. McGhee and he appears to have colored features. They are more darker than mine . . .”); and they brought in two members of the Wayne State University Department of Sociology and Anthropology to cast doubt on lay abilities to recognize racial differences (187).

Rose also tells of the social and economic forces that served, almost paradoxically, to undermine these covenants. The conventional story is that racially restrictive covenants were favored by white homeowners as bulwarks against change (189). But as white flight from the cities accelerated after World War II, many owners of restricted urban properties “found that they

10. 334 U.S. 1 (1948).



could attract very few white bidders, who made low offers; meanwhile, these owners were foreclosed by the [covenants] from selling to African Americans who would have bid more" (189). As a result, white owners would disregard the covenants, claiming that "changed circumstances" had made their "benefit" obsolete (189).

In the course of the story, Rose explores one of the great theoretical issues presented by *Shelley*: how a private, racially restrictive covenant could involve state action, necessary for the Supreme Court's ultimate holding that such covenants violate the Fourteenth Amendment's Equal Protection Clause. Rose observes that *Shelley* involved *property* law, making it far more than the simple enforcement (or nonenforcement) of a private contract. The enforcement of covenant rights and obligations involves judicial determinations of land value, "whether under the rubric of 'restraints on alienation,' 'touch and concern,' or the equitable doctrines of 'changed circumstances'" (196). "[W]hen a court holds that a covenant 'runs' to subsequent purchasers . . . , the court implicitly makes assumptions about what landowners in general would be likely to expect and to value in owning the land in question" (197). To enforce a racially restrictive covenant, the court would have to hold that discrimination is "valuable"; it would have to "endorse[] [and value] well-established and widely-known customary norms of discrimination against racial minorities" (197). "After *Shelley*, American courts could not be used to fortify that culture and those prejudices" (198).

The last five stories continue the theme of land and its ownership, but in very different settings. Peter Salsich examines *Brown v. Lober*<sup>11</sup> and explores the hazards of selling encumbered land, while telling a memorable tale about a sale of land in southern Illinois coal country (201). Along the way, he examines the professional responsibilities of lawyers in land transactions and the value of alternative means to settle land disputes. In his story about the *Neponsit*<sup>12</sup> case, Stewart E. Sterk writes engagingly about the intricacies of covenants, and how the case that established the enforceability of covenants requiring payment of homeowners' association fees—a pivotal development for the rise of common-interest communities—was the product of a grudge match between the Neponsit Property Owners' Association and dissident members (301, 319).

The three remaining tales are about classic cases in the land-use area—*Lucas*,<sup>13</sup> *Spur*,<sup>14</sup> and *Euclid*.<sup>15</sup> Vicki Been tackles *Lucas*, and the result is a factually rich and theoretically challenging account of this case. She tells of David Lucas's rise from rags to riches, from a "young, struggling, single family homebuilder" who played guitar at political gatherings (221, 224) to a wealthy developer of a 2500-unit project who dabbled in Egyptian Arabian horses (225–26). Perhaps because of his personal experience with the Horatio Alger

11. 389 N.E.2d 1188 (Ill. 1979).

12. *Neponsit Property Owners' Ass'n v. Emigrant Indus. Sav. Bank*, 15 N.E.2d 793 (N.Y. 1938).

13. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

14. *Spur Industries v. Del E. Webb Development Co.*, 494 P.2d 700 (Ariz. 1972).

15. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

story, Lucas believed in “the freedom to live the American dream” (213). When (after many years of rumblings) the state of South Carolina finally established interim baseline and setback rules for shoreline structures, which—in their initial form—made Lucas’s two remaining lots unbuildable, Lucas came out “with all guns blazing” (231). Rather than request relief from these interim rules (as other landowners had done), Lucas filed suit. And so the famous case began.

In telling the story, Been takes us beyond the facts of the *Lucas* case to a discussion of the broader political and economic forces involved in shoreline preservation cases. She explores the ultimate irony in *Lucas*: faced with Lucas’s U.S. Supreme Court win, the state bought his lots and sold them for development. Under the conventional understanding, this is an embarrassing admission “that governments will over-regulate unless they are forced to pay compensation to property owners affected by the regulations” (241). Been offers other explanations. Opposition to the interim rules from shoreline owners and developers (a well-organized and historically powerful lobby) had resulted in the introduction of legislative proposals to amend the rules well before Lucas’s trial court victory (243–44). These amendments became law in 1990 and allowed landowners to build in exchange for square footage limitations and other conditions (247). “Rather than litigate their right to insist upon those provisions, the [Coastal] Council rationally may have decided to [buy] Lucas out and sell[] to someone who wasn’t intent on fighting over whether the permits could be conditioned” (247).

On a theoretical level, Been challenges the notion that litigation of the *Lucas* type is an effective vehicle to expose true social costs and benefits in shoreline cases, or to maximize net social welfare. In fact, she argues, it is far more likely that local governments will underregulate than overregulate when it comes to achieving shoreline development. Opposition to development curbs by local, well-organized constituencies is great, and it is simply easier for local politicians to push the costs of development—in the form of erosion of distant land, continued rebuilding of public infrastructure after storms, and expensive beach “nourishment” programs—on to nonconstituent owners of shoreline land and nonconstituent taxpayers.

The story of *Spur*, told by Andrew P. Morriss, is also one of conflicting land uses and personal politics (259). Morriss tells the story of Arizona’s rapid growth and economic change in the forty years prior to the *Spur* case, and how Delbert Eugene Webb rode the crest of this building boom. (He was apparently quite accommodating in what he would build: for instance, he constructed “a concentration camp for interned Japanese-Americans in Parker, Arizona in under three weeks” (279). He also built manufacturing plants, shopping centers, motels, and housing complexes (280).) His talent for spotting new opportunities gave him the idea that “active retirees” would welcome a self-contained retirement community. “A concept paper [for what became Sun City] listed the core of the project as ‘Activity, Economy, and Individuality’” (282). To save on cost, Webb purchased cheap land for the development near the huge cattle feedlot of Spur Industries. By buying that land, rather than land closer to Phoenix, Webb increased his profit from the deal by an estimated \$17 million (292).

Sun City's rapid growth led to inevitable conflicts with Spur. Webb and various residents sued Spur, claiming that Spur's operations were a nuisance. The case provides another example of the truth illustrated by *Sturges v. Bridgman*: until the courts establish the parties' relative rights in a nuisance case, efforts to resolve the dispute typically fail. After the Arizona Supreme Court issued its famous resolution—that Spur was a nuisance, but that Webb must indemnify Spur for its move—an out-of-court agreement on Webb's claims was reached. Morriss argues that the case is a good illustration of the flexibility and inventive potential of the common law in handling the difficult problems of changing land use.

The story of *Euclid*, by David Callies, is the last one in the book (325). Callies tells of the honorable—and not so honorable—origins of the movement toward Euclidean zoning, which “remains the dominant local government method for controlling the use of land today” (333). On the positive side, zoning was a revolutionary way to protect residential neighborhoods from polluting industries and other nuisances. On the negative side, it was explicitly used in the early years as a way to ensure segregation on the basis of race and class (334). “As one contemporary (with Euclid) commentator put it: . . . ‘No height restriction, street width, or unbuilt lot area will prevent prices from tottering in a good residential neighborhood unless it helps at the same time to keep out Negroes, Japanese, Armenians, or whatever race most jars on the natives’” (335). “[A] prominent zoning consultant in Atlanta allegedly prepared a zoning ordinance in which residential districts were divided into three types: white, colored and undetermined” (335).

Callies describes how the dual themes of protection and exclusion continue to justify and trouble zoning schemes today. “The segregation of uses is by definition exclusionary” (334). While explicit zoning by race is now forbidden,<sup>16</sup> zoning that entrenches economic segregation remains. As a result, the competing goals of preservation of neighborhood (or rural) character, environmental protection, and equal housing opportunity (for the poor, the disabled, and others) struggle for supremacy in zoning cases today (334–35).

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As I came to the end of this wonderful collection of stories, I realized that I had learned a great deal. Knowing the richness of settings, scenes, and characters, I would never see these cases in the same way again. This made me wonder about the way we (as property teachers) usually present the cases we teach. Do we (in spite of our best efforts) tend to portray the law as something that exists apart from human lives? Do we tend to forget the process of law, in which human beings decide, err, struggle, and decide again? Do we remember that the common law (in particular) is an organic being, an accumulation of accident, arrogance, and coincidence, as well as conscious plan?

When I finished reading these stories, I found that I had both greater skepticism about the larger human legal endeavor and greater awe of it. After reading all of these stories, I was hungry for more.

16. See *Buchanan v. Warley*, 245 U.S. 60 (1917).